

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:06CR251-5

UNITED STATES OF AMERICA)
)
)
)
VS.) ORDER
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)
JOHN EDWARD PATTERSON)
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_____)

THIS MATTER is before the Court on the Defendant's appeal from the denial by the Magistrate Judge of his motion for reconsideration of release pending sentencing.

I. PROCEDURAL HISTORY

The Defendant was indicted on October 3, 2006, with conspiracy to possess with intent to distribute 50 grams or more of cocaine base. **Bill of Indictment, filed October 3, 2006.** On February 13, 2007, the Defendant entered into a plea agreement with the Government pursuant to which he pled guilty to the bill of indictment and agreed that he was responsible for more than 150 grams but less than 500 grams of cocaine base. **Plea**

Agreement, filed February 13, 2007. The Defendant, therefore, faces a mandatory minimum sentence of 10 years and not more than life imprisonment. **21 U.S.C. § 841(b)(1)(A)(iii).** On February 21, 2007, the Defendant entered his plea of guilty at a Rule 11 hearing.

Citing the Defendant's significant past criminal history, including his convictions for violent crimes, robbery and indecent liberties with a minor, the Magistrate Judge ordered him detained pending trial. The Defendant moved the Magistrate Judge to reconsider release pending sentencing. By written order, the Magistrate Judge declined to order conditions of release.

Order, filed February 21, 2007.

II. STANDARD OF REVIEW

The judicial officer *shall order* that a person who has been found guilty of an offense [for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substance Act] and is awaiting imposition or execution of sentence be detained unless-

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2).

III. DISCUSSION

The Defendant cannot meet the requirements of this statute. Under the statutory language, the Defendant cannot show that there is a substantial likelihood that a motion for acquittal or new trial will be granted or that the Government has recommended that no sentence of imprisonment be imposed. This Court is, therefore, required to order detention pending sentence, as the language of the statute is mandatory.

IV. ORDER

IT IS, THEREFORE, ORDERED that the Defendant's appeal is **DENIED**, and the Magistrate Judge's Order of Detention is hereby **AFFIRMED**.

Signed: March 5, 2007



Lacy H. Thornburg
United States District Judge

